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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-10

EXXON CORPORATION AND
PHILLIPS PETROLEUM COMPANY,
Appellants,

v.

GOVERNOR OF THE STATE OF MARYLAND, ET AL.,
Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION OF CROWN CENTRAL PETROLEUM CORPORATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF APPELLANTS

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Pursuant to Rule 42 of the Rules of this Court, Crown Central Petroleum Corporation (hereinafter "Crown") respectfully moves the Court for leave to file the attached brief *amicus curiae* in the above entitled case. The brief supports the position of the Appellants (hereinafter the "Oil Companies"), stated in their several jurisdictional statements, that Chapter 854, Laws of Maryland 1974, as amended by Chapter 608, Laws of Maryland 1975, and codified in the Maryland Annotated Code (1957) Article 56, § 157E, (1972 Repl.

Vol., 1976 Cum. Supp.) hereinafter ("the Act" or "the Maryland Act") is invalid under the Commerce Clause of Article I Section 8 of the United States Constitution and the Supremacy Clause of Article VI of the Constitution.

Counsel for the Appellants and Appellees have declined to consent to the filing of this *amicus* brief.

NATURE OF CROWN'S INTEREST AS AMICUS CURIAE

Crown is a Maryland corporation which is engaged in all aspects of the petroleum business, including producing, refining and marketing gasoline. The gasoline is produced at its refinery near Houston Texas and is marketed in interstate commerce under its trade and service mark "Crown" in a number of states, including Maryland.

Crown was a pioneer in developing the marketing technique of retailing gasoline through high volume service stations which are operated twenty-four hours per day, seven days per week, which concentrate on the sale of gasoline and which do not provide the repair and other services provided by conventional lower volume service stations. Its mark "Crown" is registered with the United States Patent Office under the Lanham Act, 15 U.S.C. § 1051 *et. seq.*, both as a trademark to identify the product and as a service mark to identify Crown's distinctive method of marketing. By virtue of such registration Crown has the exclusive right to utilize such mark both to identify the product and to identify its distinctive marketing system.

As of November 10, 1977, Crown owned or leased forty-four retail service stations in Maryland of which thirty-three were leased or subleased to dealers and eleven were company operated. Forty-two of these stations are identified by signs bearing the registered

mark "Crown" so as to enable the public to recognize them as "multi-pump" outlets featuring high volume sales of gasoline at generally competitive discount prices, around-the-clock service and the other concepts associated with Crown's distinctive method of marketing. The provisions of the Maryland Act will require Crown to cease operating the service stations which are now operated by it and thereby prevent it from exercising the rights granted to it by the Lanham Act.

Crown believes that the Oil Companies have not brought, and are not likely to bring, to the attention of this Court the conflict between the Maryland Act and the rights under the Lanham Act of the owner of a service mark to use and regulate use of such mark as a means of identifying a particular marketing system and technique and that consequently the existence of such conflict may be overlooked by this Court.

CONCLUSION

For the foregoing reasons it is respectfully requested that this Motion be granted in order that Crown and other owners of service marks not be prejudiced by failure of this Court to consider the conflict between the Maryland Act and the provisions of the Lanham Act granting to the owner of a registered mark the right to utilize such mark to the exclusion of others as a means of identifying each owner's particular method of marketing.

Respectfully submitted,

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STATEMENT OF INTEREST OF AMICUS CURIAE

Crown Central Petroleum Corporation (hereinafter "Crown") is a Maryland Corporation with its corporate headquarters and principal offices in Baltimore, Maryland. Crown is engaged directly and through subsidiaries in all aspects of the petroleum business including production, refining and marketing of gasoline and other petroleum products in twenty-seven states and the District of Columbia.

Crown is not a "major" oil company and its retail outlets are considerably different from the "conventional" or "full-service" bay-type services stations traditionally operated by the "majors". Crown is to be distinguished from the "major" oil companies which are characterized by extensive production of crude oil, large refining capacity and distribution of gasoline through service station networks extending throughout entire regions. Because of the importance of these factors and Crown's relative weakness in these areas, it can only achieve competitive viability by maximizing efficiencies in its retail marketing operations and by the use of innovative concepts to stimulate brand recognition and public acceptance.

As is described in detail in the "Findings of Fact" in the opinion of Judge Young in *Crown Central Petroleum Corporation v. Zarb*, not officially reported, D. Md. 1975, Civil No. Y-75-397, 3 CCH Federal Energy Guidelines Par. 26,028, after many years of operating with marginal results under a conventional approach like that of the "majors", Crown developed during the late 1960's and early 1970's, a high-volume minimal-service, low-cost marketing approach, which it called its "multi-pump" program. Somewhat analogous in concept to "fast foods" restaurants and chain supermarkets, the "multi-pump" program is characterized by retail stations which emphasize high-volume obtained by competitive discount prices, spacious, attractive, clean, well-lighted service stations open twenty-four hours a day, seven days a week, featuring fast, efficient service, and without the service bays and resultant clutter and inefficiency associated with the full-service type of station. In conjunction with the development of this new marketing technique, Crown adopted a new method of displaying its mark "Crown" and on April 13, 1971, registered this new form with the United States Patent Office, as both a trade mark for gasoline and a service mark for gas station services.[1]

[1] Crown had previously registered the word "Crown", both separately and in conjunction with other devices, as a trademark for gasoline and other petroleum products.

Crown operates all of its "multi-pump" stations under its federally registered mark and has developed substantial customer goodwill associated with this mark. At present Crown owns or leases 163 "multi-pump" outlets in nine states which are identified by this service mark, including forty-two such stations in Maryland, of which thirty-two are operated by independent dealers and ten are company-operated. Under the provisions of the Lanham Act, 15 U.S.C. § 1501 *et. seq.*, (a) this is use of the service mark in interstate commerce since the services are rendered in more than one state and Crown is engaged in interstate commerce in connection therewith by reason of the shipment of the gasoline from Texas to other states in which the service stations are located, 15 U.S.C. § 1127, and (b) by virtue of such registration Crown has the exclusive right to use such service mark, 15 U.S.C. § 1115(b).

The principal thrust of the Maryland statute at issue in this case (Maryland Annotated Code (1975), Art. 56, § 157E (1972 Repl. Vol. and 1976 Cum. Supp.)), are the requirements in § 157E(b) that "no producer or refiner of petroleum products shall open a . . . retail service station in the State of Maryland, and operate it with company personnel . . . [and t]he station must be operated by a retail service station dealer" and in § 157E(c) that "no producer or refiner of petroleum products shall operate a . . . retail service station in the State of Maryland . . . [and t]he station must be operated by a retail service station dealer."

It is Crown's contention that these provisions prevent it, and other producers or refiners of petroleum products who have federally registered service marks identifying distinctive means of marketing gasoline, from exercising its and their federally granted rights throughout the United States. In particular, this Maryland statute precludes Crown from making any use of its federally registered service mark in Maryland otherwise than by granting rights to others.

ARGUMENT

THE DIVESTITURE PROVISIONS OF THE MARYLAND ACT ARE INVALID AS CONFLICTING WITH THE FEDERALLY PROTECTED EXCLUSIVE RIGHT TO USE A SERVICE MARK IN INTERSTATE COMMERCE.

A. *The Maryland Act*

The Maryland statute which is the subject of this case is a part of the Maryland Motor Fuel Inspection Law, and is codified in Maryland Annotated Code (1957), Article 56, § 157E, (1972 Repl. Vol., 1976 Cum. Supp.), as enacted by Maryland General Assembly in Chapter 854 of the Laws of 1974 as amended by Chapter 608 of the Laws of 1975. The principal thrust of the law is found in the "divestiture" requirements of sub-sections (b)[2] and (c)[3] prohibiting any producer or refiner of petroleum products from opening or operating a retail service station in Maryland and requiring that such service stations must be operated by service station dealers. As the Court of Appeals of Maryland concluded in its opinion upholding the constitutionality of the Act, the effect of these provisions is to prohibit the appellants, *amicus,* or any other oil company which produces or refines petroleum products from operating a service station except by leasing it to an independent dealer.

[2] "(b) After July 1, 1974, no producer or refiner of petroleum products shall open a major brand, secondary brand or unbranded retail service station in the State of Maryland, and operate it with company personnel, a subsidiary company, commissioned agent, or under a contract with any person, firm, or corporation, managing a service station on a fee arrangement with the producer or refiner. The station must be operated by a retail service station dealer."

[3] "(c) After July 1, 1975, no producer or refiner of petroleum products shall operate a major brand, secondary brand, or unbranded retail service station in the State of Maryland, with company personnel, a subsidiary company, commissioned agent, or under a contract with any person, firm, or corporation managing a service station on a fee arrangement with the producer or refiner. The station must be operated by a retail service station dealer."

(279 Md. 410, 437, 370 A.2d 1102, 1117). The terms of such leases are regulated by Maryland's Gasoline Products Marketing Act (Subtitle 3 of the Commercial Law Article of the Annotated Code of the Public General Laws of Maryland, enacted by Chapter 49, Acts 1975, as amended by Chapter 624, Acts 1975),[4] which is reproduced in full (without annotations) in Appendix A, and accordingly the validity of this requirement for leasing must be determined in light of the Gasoline Marketing Products Act.

B. *The Exclusive Right To Use Of A Federally Registered Mark In Interstate Commerce Is Guaranteed By The Lanham Act.*

The Lanham Act, 15 U.S.C. § 1051, *et. seq.*, was enacted by Congress in 1946 to deal comprehensively and completely with the registration and use of various types of marks[5] in interstate and foreign commerce. The general thrust of the Act was to ensure to federal registrants the right to use their marks throughout a nationwide market. Although the protection of trade-marks was premised on the related goods being sold in commerce (defined as meaning "all commerce which may lawfully be regulated by Congress"), the protection of service marks was extended to cover cases where the

[4] The Maryland legislature is engaged in making a complete revision of the Maryland Code by enacting Articles designated by discriptive titles such as "Commercial Law Article", "Corporations and Associations Article", etc. which incorporate provisions pertaining to the designated subject matter which were previously contained in several numbered Articles.

[5] Under 15 U.S.C. § 1127 the term "mark" is defined as meaning "any trade-mark, service mark, collective mark or certification mark", the term "trade-mark" is defined as meaning "any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others" and the term "service mark" is defined as meaning "a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others . . . ."

related services are rendered in more than one state or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith. 15 USC § 1127.

The Lanham Act assures that with certain precisely defined exceptions the owner of a federally registered mark has the "exclusive right to use the registered mark in commerce. . . ." 15 USC § 1115. Such exclusive right of use of necessity involves a right to make a direct use, as distinguished from a use solely by licensees,[6] although licensing was also permitted by 15 USC § 1055 which provides:

> "Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies,[7] such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public."

[6] Originally a mark could be used only by the owner and the granting of a license to others was deemed to be tantamount to a fraud upon the public which could result in the loss of the exclusive right of use. See *Manhattan Medicine Co. v. Wood,* 108 U.S. 218 (1883); *Bulte v. Igiehart Bros.,* 137 Fed. 492 (7th Cir. 1905); *Macmahan Pharmacal Co. v. Denver Chemical Mfg. Co.,* 113 Fed. 468 (1901). Over the years preceding the enactment of the Lanham Act the doctrine had gradually evolved that a mark could function not only as a means of identifying the purveyor of the goods or services but also as an assurance of quality and that consequently, the granting of licenses to use the mark would not invalidate the mark provided the owner of the mark exercised a sufficient degree of control over the licensee. See *Isaacs, Traffic In Trade Symbols,* 44 Harv. L. Rev. 1210 (1931); See *Crown Fabrics Corp. v. American Viscose Corp.,* 145 F.2d 246 (CCPA 1944); *E. I. DuPont de Nemours & Co. v. Celanese Corp.,* 167 F.2d 484 (CCPA 1948).

[7] The term "related company", previously unknown in the law of tradmarks, is defined in 15 U.S.C. § 1127, as:

> "any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used."

The purpose of Congress in enacting the Lanham Act was not only to establish a system of federal registration for the various types of marks, including trade and service marks, but also to grant substantive rights to the owners of such marks. The rationale for this scheme was set out as follows in Senate Report No. 1333, U.S. Code Congressional Service, (79th Congress 2d Sess., 1946) 1274, 1276-77:

> "The theory once prevailed that protection of trademarks was entirely a State matter and that the right to a mark was a common-law right. This theory was the basis of previous national trademark statutes . . . . A man's rights in his trademark in one State may differ widely from the rights which he enjoys in another.
>
> However, trade is no longer local, but is national. Marks used in interstate commerce are properly the subject of Federal regulation. It would seem as if national legislation along national lines securing to the owners of trade-marks in interstate commerce definite rights should be enacted and should be enacted now.
>
> There can be no doubt under the recent decisions of the Supreme Court of the constitutionaltiy of a national act giving substantive as distinguished from merely procedural rights in trade-marks in commerce . . . and . . . a sound public policy requires that trade-marks should receive nationally the greatest protection that can be given them."

See generally, *Dawn Donut Co. v. Hart's Food Stores, Inc.,* 267 F.2d 358, 362 (2nd Cir. 1959), where Judge Lumbard confirmed that it was the purpose of Congress to "afford . . . nationwide protection to registered marks, regardless of the areas in which the registrant actually uses the mark. . . ."

In the last grammatical paragraph of 15 USC § 1127 Congress made it clear that not only did it intend to regulate the use of marks in commerce within its power to control, but most importantly, that it also intended

"to protect registered marks used in such commerce from interference by State, or territorial legislation."

C. *The Maryland Act Directly Conflicts With And Is Preempted By The Lanham Act*

Several recent cases have recognized the primacy of the Congressional policies embodied in the Lanham Act and have held that any contrary state laws are preempted and invalid. Thus, in *Mister Donut of America, Inc. v. Mr. Donut, Inc.*, 418 F.2d 838 (9th Cir. 1969), the Ninth Circuit rejected the plaintiff's contention that, under California law, it had broader rights to the use of its federally registered trademark *vis-a-vis* the defendant's unregistered common-law trademark than had been granted by Congress, stating:

> "What the effect of this California statutory provision might be if the Lanham Act had not been passed by Congress, we need not decide. The Lanham Act has pre-empted the field of trademark law and controls." (418 F.2d at 844).

Similarly, in *Burger King of Florida, Inc. v. Hoots*, 403 F.2d 904, 908 (7th Cir. 1968), it was held that the defendant could be entitled by virtue of its state registration to no right which would foster "an interference with plaintiffs' exclusive right in interstate commerce to use its federal mark."

The Maryland Act constitutes a clear and direct interference with the rights of producers or refiners of petroleum products who own registered service marks, such as Crown, to exercise the full scope of the rights granted to them by the Lanham Act to utilize such service marks in the marketing of gasoline in Maryland. As noted *supra* at p. 4, the effect of the Maryland Act as construed by the Maryland Court of Appeals is to prohibit producers or refiners from operating gasoline service stations (an otherwise completely lawful business) in Maryland and to require that all such stations be operated by dealers. The resulting consequence is to absolutely prevent Crown from utilizing its service mark in Maryland otherwise than by licensing others to use it. Moreover, under the terms of the Gasoline Products Marketing Act, such licensing must comply with various requirements and may not contain certain provisions.

The Maryland Act's prohibition against direct use of a service mark by the owner of such mark in an otherwise lawful business is legally identical to the Puerto Rican prohibition against the owner's use of certain trademarks is an otherwise lawful business which was invalidated by this Court in *Bacardi Corp. v. Domenech*, 311 U.S. 150 (1940). The Puerto Rican statute under consideration generally regulated the manufacture of alcoholic beverages in Puerto Rico, and Bacardi Corp. was the holder of a permit authorizing it to conduct such manufacturing in Puerto Rico. The Puerto Rican statute contained provisions which "prohibited the holder of a permit from manufacturing any distilled spirits which were 'locally or nationally known under a brand, trade name, or trademark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico.'" 311 U.S. at 153. Bacardi Corp. was the licensee of the Cuban corporation which owned the "Bacardi" and related trademarks. The right to use those marks, which had originated in Cuba, was assured by a treaty between the United States, Cuba and a number of other American States. This Court held that although Puerto Rico could have completely prohibited the manufacture of rum in Puerto Rico, 311 U.S. at 156-157, 168, it could not concurrently permit the manufacture of rum and prohibit the use in such manufacture of a trademark which the manufacturer was otherwise entitled to use under a treaty of the United States, and that accordingly so much of the Puerto Rican statute as "prohibited . . . the use of its [Bacardi's] trademarks, although

valid and duly registered and although the product to which they are applied is otherwise lawfully made and the subject of lawful sale, solely because the marks had previously been used outside Puerto Rico . . .", was invalid under the Supremacy Clause. 311 U.S. at 157, 167.

It is not necessary in the present case to consider whether or not Maryland could completely prohibit the sale of gasoline from service stations or could prohibit any use of a service mark to identify the service station, since it has not attempted to do so. What Maryland has attempted to do is to prohibit any use of a service mark by a refiner or producer of gasoline otherwise than pursuant to licenses which are granted to dealers and which meet the requirements of the Gasoline Products Marketing Act. This directly conflicts with the intent of the Congress that, subject only to those limitations which have been imposed by Congress, the owner of a federally registered service mark should have the right to use the mark in the conduct of the business to which the service mark pertains in all places in the United States in which such business may be lawfully conducted and should have the further right to decide for itself whether such use should be a direct use or a use which is licensed pursuant to 15 USC § 1055.

The question of whether a state may constitutionally limit use of a federally registered mark solely to a use through licensing in accordance with terms prescribed by the state is entirely different from the superficially similar question of whether a state may constitutionally prohibit the granting of licenses on terms which conflict with some generally applicable public policy of the state. As was properly pointed out by the Court of Appeals for the Third Circuit in *Mariniello v. Shell Oil Company,* 511 F.2d 853, 858 (3rd. Cir. 1975) a license to use a mark is a contract, the mere fact that the subject matter of the contract is a federally protected mark does

not warrant the inclusion of provisions violative of the public policy of the state involved and accordingly such provisions may be held unenforceable "even though the freedom of a trademark holder to dictate the terms of its licensing arrangement would thereby be curtailed to some degree". See also *Becker v. Crown Central Petroleum Corporation,* 26 Md. App. 596, 340 A.2d 327 (Maryland Court of Special Appeals, 1975), where the court held that the regulation by the Gasoline Products Marketing Act of contracts which had been voluntarily entered into between Crown and one of its service station dealers did not necessarily conflict with Crown's rights under the Lanham Act.

There is obviously an enormous difference between a prohibition against the inclusion in licensing contracts which are voluntarily entered into of provisions that are contrary to public policy and a prohibition against making any use of the federally protected mark in Maryland otherwise than pursuant to licensing contracts which contain provisions dictated by Maryland. The difference is exactly the same as the difference between the right of a state to direct that any lease of property must comply with requirements imposed by the state, and the non-right of the state to prohibit the owner of the property from using it himself instead of leasing it to others on terms dictated by the state. The latter type of prohibition is something far greater than a mere curtailment "to some degree" of the exercise by the registered owner of its federally granted rights.

This is particularly true where the state-mandated terms of the licensing agreement directly conflict with the marketing concept which is identified by the service mark and the state mandates that the service station dealer shall have specific valuable rights to the detriment of the owner of the federally protected mark. As indicated *supra* at p. 2, the marketing concept which is identified by Crown's service mark includes a

requirement that the stations be operated 24 hours per day, 7 days per week, yet Section 11-304(d) (Ap. A, p. 4a) purports to prohibit any requirement that the dealer keep the station open for a specified number of hours per day or days per week except "when this requirement is negotiated in good faith by both parties and arrived at in mutual agreement and it is on the basis of a bona fide business need."[8] Similarly, under § 11-304(e), the owner of the mark is prohibited from requiring the dealer to use any promotion, premium, coupon, giveaway or rebate in the operation of the station notwithstanding that this may be an essential element of the particular marketing concept. Equally objectionable are the requirements in § 11-304(g) that the owner of the mark consent to assignments, transfers, sales and renewals and in § 11-304(i) that upon termination the owner of the mark must pay the dealer for the value of any business goodwill which the dealer then enjoys.[9]

The concurrent requirements of the Maryland Act that the rights of Crown as the owner of a federally registered service mark be exercised in Maryland solely by granting licenses to service station dealers and of the Gasoline Products Marketing Act as to the terms of such licenses involve serious risks that Crown may lose its rights in its federally registered mark. A registrant

[8] It is significant to note that similar language in other statutes has been construed to necessitate an independent determination by the courts as to whether the particular requirement desired by the owner of the mark is in fact a reasonable requirement. *Raindance, Inc. v. Crown Central Petroleum Corp.*, unreported decision of the Superior Court of New Jersey, Chancery Division, Ocean County, Dkt. No. C-3279-76, June 6, 1976; *Crown Central Petroleum Corp. v. Agin*, unreported decision of the Superior Court of New Jersey, Chancery Division, Middlesex County, Dkt. No. C-2425-74, May 28, 1975.

[9] This requirement would appear to directly conflict with the provisions of 15 U.S.C. § 1055 that use by others "shall inure to the benefit of the registrant".

who licenses its mark does so at the risk of being deemed to have abandoned it if it fails properly to control the use of it by its licensees, i.e., if it fails to insist that its licensees carry out everything which the public has a reasonable right to expect to have been carried out where the mark is used. See *Dawn Donut Co. v. Hart's Food Stores, supra; Alligator Co. v. Robert Bruce, Inc.*, 176 F. Supp. 377 (E.D. Pa. 1959). Notwithstanding that Crown's marketing concept, as identified by its service mark, encompasses operations 24 hours per day, 7 days a week, and compliance with this standard has been included by Crown in its agreements with its dealers, § 11-304(d) of the Gasoline Products Marketing Act permits it to impose such requirements only by mutual agreement after negotiation and then only if it is determined that this requirement is based upon a bona fide business need. Crown and other owners of federally registered service marks may well be faced with the Hobson's choice of either abandoning the use of their marks in Maryland and making payments to their dealers for goodwill which is primarily attributable to such marks and the marketing techniques identified thereby or losing such marks because of failures by the dealers to adhere to the marketing standards identified by the marks.

It is not necessary for this Court to decide whether the enactment of the Lanham Act has completely precluded the states from enacting any statutes which may affect the terms under which federally protected marks are licensed. All that is necessary to be decided is that a state statute which prohibits any use of the federally registered mark except by licenses under terms prescribed by the state constitutes an "interference by State . . . legislation" which Congress intended to prevent. 15 USC § 1127.

CONCLUSION

It is respectfully submitted that the conflict between the Maryland Act and the Congressional policies expressed in the Lanham Act is manifest and irreconcilable and that accordingly the Maryland Act constitutes "state legislation which frustrates the full effectiveness of federal law [and] is rendered invalid by the Supremacy Clause". *Perez v. Campbell,* 402 U.S. 637, 652 (1971). We therefore respectfully request that the Court render judgment in favor of the Appellants and reverse the decision of the Maryland Court of Appeals.

Respectfully submitted,

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Dated: November 17, 1977

APPENDIX A

Maryland Annotated Code (1957)
Commercial Law Article § 11-301 — § 11-308
(1975 Ed. and 1976 Cum. Supp.)

Subtitle 3. Gasoline Products Marketing Act

§ 11-301. Definitions.

(a) *In general.* — In this subtitle the following words have the meanings indicated.

(b) *Dealer.* — (1) "Dealer" means a person engaged in the retail sale of gasoline products under a marketing agreement, at least 30 percent of whose gross revenue is derived from the retail sale of gasoline products.

(2) "Dealer" does not include an employee of a distributor.

(c) *Distributor.* — (1) "Distributor" means a person who:

(i) Engages in the sale, consignment, or distribution of gasoline products through retail outlets which he owns or leases; and

(ii) Maintains an oral or written contractual relationship with a dealer for the sale of the products.

(2) "Distributor" includes any subsidiary or affiliated corporation in which a distributor holds at least 30 percent voting control.

(d) *Marketing agreement.* — "Marketing agreement" means an oral or written agreement between a distributor and a dealer under which the dealer is granted the right, for the purpose of engaging in the retail sale of gasoline products supplied by the distributor, to:

(1) Use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor; or

(2) Occupy premises owned, leased, or controlled by the distributor.

(e) *Person.* — "Person" includes an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) *Retail sale.* — "Retail sale" means the sale of a product for purposes other than resale.

§ 11-302. Legislative declaration; statement of public policy.

(a) *Legislative finding and declaration.* — The General Assembly finds and declares that since the distribution and sale through marketing arrangements of petroleum products in the State vitally affect the economy of the State, and its public interest, welfare, and transportation, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining to these marketing arrangements.

(b) *Statement of public policy.* — This subtitle constitutes a statement of the public policy of the State.

§ 11-303. Information to be given by distributor to prospective dealer.

Before any marketing agreement is concluded, a distributor shall disclose fully to a prospective dealer the following information:

(1) Any gallonage history of the location under negotiation for the shorter of:

(i) The three-year period immediately past; or

(ii) The entire period during which the location has been supplied by the distributor;

(2) The name, last known address, and reason for the termination of the marketing agreement of each person who was a dealer at the location during:

(i) The five-year period immediately past; or

(ii) The entire period during which the location has been supplied by the distributor;

(3) Any commitment for the sale, demolition, or other disposition of the location;

(4) Any training program and any specific goods and services which the distributor will provide for and to the dealer;

(5) Any obligation which will be required of the dealer;

(6) Any restriction on the sale, transfer, and termination of the agreement; and

(7) The total amount of any cash deposit required, any amount of interest to be paid on the deposit, and the conditions for the return of the deposit.

§11-304. Marketing agreement subject to certain provisions.

(a) *In general.* — Every marketing agreement is subject to the provisions of this section, whether or not expressly set forth in the agreement.

(b) *Dealer's right to cancel.* — (1) Until midnight of the seventh business day after the day a marketing agreement is signed or entered into, the dealer may cancel it by giving written notice of cancellation to the distributor in person or by registered or certified mail.

(2) Within 10 days after delivery of the notice of cancellation, the dealer shall return to the distributor full possession of any service station, location, money, equipment, or merchandise loaned, sold, or delivered under the marketing agreement to the dealer by the distributor.

(3) The distributor shall give the dealer full credit or its cash equivalent for all money, equipment, and merchandise returned.

(c) *Price setting.* — The distributor may not set or maintain or attempt to set or maintain the price at

which the dealer sells any product, and the price of any product may not be subject to enforcement or coercion by the distributor in any way. However, the distributor may counsel with the dealer concerning prices and may suggest prices to him.

(d) *Hours of business.* — A distributor may only require a dealer to keep his retail outlet open for business for a specified number of hours per day or days per week when this requirement is negotiated in good faith by both parties and arrived at in mutual agreement and it is on the basis of a bona fide business need.

(e) *Promotions.* — The distributor may not require the dealer to use any promotion, premium, coupon, give-away, or rebate in the operation of the business. However, if not otherwise prohibited by law, the dealer may participate in a promotional, premium, coupon, give-away, or rebate program sponsored by the distributor.

(f) *Notice of intent not to renew.* — A distributor who intends not to renew a marketing agreement shall give notice of his intent to the retail service station dealer at least 90 days before the expiration of the term of the marketing agreement, whether or not the marketing agreement contains a provision for automatic renewal or, by its terms, expires at a fixed time. Failure to give notice constitutes a renewal of the marketing agreement for a term of one year from its stated expiration date. This notice requirement supersedes the notice provisions of Article — Real Property, § 8-402(b), Annotated Code of Maryland, as well as any notice provision set forth in the marketing agreement.

(g) *Distributor may not unreasonably withhold certain consents; reasons for nonrenewal to be set forth in notice.* — The distributor may not unreasonably withhold his consent to any assignment, transfer, sale, or renewal of a marketing agreement, whether or not the marketing agreement contains a provision for

automatic renewal or, by its terms, expires at a fixed time. Notice of intent not to renew a marketing agreement shall set forth, in specific detail, the reasons relied upon by the distributor for the nonrenewal.

(h) *Repurchase on termination or cancellation.* — (1) Except with respect to a cancellation to which subsection (b) of this section applies, within 30 days after the date a marketing agreement is terminated or cancelled, whether by mutual agreement or otherwise, the distributor shall repurchase from the dealer at the then current wholesale price all merchantable products purchased by the dealer from the distributor.

(2) The distributor may apply the proceeds of any repurchased product against any existing debt owed by the dealer to the distributor.

(3) The obligation to repurchase under this subsection is enforceable only to the extent that there are no other valid claims or liens against the products by or on behalf of other creditors of the dealer.

(i) *Payment for goodwill.* — (1) In addition to the provisions of subsection (h) of this section, if, without the written consent of the dealer, the distributor terminates, cancels, or unreasonably refuses to renew the marketing agreement, the distributor shall pay to the dealer the full value of any business goodwill which the dealer enjoys at the time he is notified of the termination, cancellation, or refusal to renew.

(2) The distributor shall make the payment required by this subsection within 30 days from the effective date of the termination, cancellation, or refusal to renew.

(3) This subsection does not apply if the dealer materially breaches the marketing agreement.

(j) *Agreement may not waive certain rights.* — The marketing agreement may not waive the right of either party to trial by jury or interposition of counter-claims or cross-claims.

(k) *Service station lease providing for minimum monthly rental.* — A clause in any lease or contract from a producer or refiner to a dealer for the use of a retail service station providing for a minimum monthly rental based on a certain volume of sales is not enforceable to the extent the minimum rent exceeds a sum equal to the minimum rent provided for in the lease or contract times a fraction, the denominator of which is the number of gallons of gasoline on which the minimum rent is based and the numerator of which is the number of gallons of gasoline made available by the producer or refiner to the dealer for that month.

§ 11-305. Defenses to action based on termination or cancellation of marketing agreement.

Subject to the notice requirements of §11-306, in any action filed under this subtitle which is based on a termination or cancellation of a marketing agreement, it is a defense that the marketing agreement was terminated or cancelled:

(1) By mutual agreement of the parties;

(2) Because of the bankruptcy or insolvency of the dealer;

(3) Because the dealer failed to comply with an express requirement of the marketing agreement; or

(4) Because the dealer failed to act in good faith in carrying out the terms of the marketing agreement.

§ 11-306. Notice of intent required to raise defenses.

(a) *Notice required to raise defense.* — A party to a marketing agreement may not raise any defense set out in §11-305 unless he gives written notice to the other party of his intent to terminate or cancel the agreement. This notice shall be given in person or by registered or certified mail at least 60 days before the date on which he intends to terminate or cancel it.

(b) *When notice not required.* — The 60-day notice is not required if at the time of termination or cancellation

of the marketing agreement any of the following is proven:

(1) Criminal misconduct;

(2) Fraud;

(3) Abandonment;

(4) Bankruptcy or insolvency of the dealer;

(5) Adulteration of product; or

(6) Giving a check which is dishonored for insufficient funds.

(c) *Notice by registered or certified mail.* — If notice is given by registered or certified mail, it shall be effective on the date of mailing.

§ 11-307. Remedies.

Any person who violates any provision of this subtitle is liable for damages caused by the violation and is subject to the other legal or equitable remedies available to the party injured by the violation.

§ 11-308. Short title.

This subtitle may be cited as the Maryland Gasoline Products Marketing Act.